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Re: Petition of the Towns of Acton and Lexington, D.T.E. 98-89

Dear Sirs:

On August 26, 1998, the Towns of Acton and Lexington ("Acton" and "Lexington", collectively "Towns") filed a Joint Petition with the Department of Telecommunications

and Energy ("Department") pursuant to the provisions of the electric industry restructuring act ("Act"). St. 1997, c. 164, § 196; G.L. c. 164, § 34A. The Towns sought resolution of disputes with Boston Edison Company ("BECo" or "Company") arising from the decisions of both Acton and Lexington to purchase the streetlighting equipment currently owned by the Company in the respective communities. On September 9, 1998, the Company filed a Response to the Joint Petition. The Department docketed this matter as D.T.E. 98-89.^(u)

On October 7, 1998, the Department conducted a hearing in this dispute. The Towns presented the testimony of George Woodbury, director of public works for Lexington; John Murray, assistant town manager for Acton; and Paul L. Chernick, a consultant from Resource Insight, Inc. The Company presented the testimony of Peter Dion, manager of BECo's community lighting services; Jerry Greer, team manager of BECo's pricing group; and John O'Donnell, supervisor of BECo's capital investment group. Initial briefs and reply comments were submitted by both the Towns and the Company.

On brief, both the Towns and the Company have identified four areas of dispute to be resolved by the Department. Specifically, the Towns have identified (1) the extent of the equipment that must be sold; (2) the proper valuation price of that equipment; (3) the appropriate distribution service tariff; and (4) the appropriateness of pole attachment fees (Towns Initial Brief at 2-3). The Company has identified (1) whether streetlighting brackets (and some poles) are streetlighting equipment subject to sale; (2) the appropriate depreciation rate to be used in the valuation of streetlighting equipment subject to sale; (3) whether the Company's existing streetlight rate, S-2, is available to the Towns after the purchase of streetlighting equipment; and (4) whether pole attachment fees are appropriate (Company Initial Brief at 2).

1. Equipment Subject to Municipal Purchase

The Act provides that a municipality may acquire all or any part of the streetlighting equipment of the electric company in the municipality. G.L. c. 164, § 34A(b). The Towns seek to purchase all of the streetlighting equipment, including brackets and

dedicated poles (Towns Initial Brief at 5). The Towns contend that the brackets and the dedicated poles serve only one purpose, and that is to support the luminaire (id. at 5-6). The Company contends that brackets and dedicated poles are not part of the lighting equipment that must be made available for purchase under the Act (Company Initial Brief at 5). The Company contends that its position is consistent with the intent of the Act (id. at 5-6). In addition, the Company states that there are legitimate safety and reliability concerns associated with Towns purchasing equipment located within the power space on the Company's utility poles (id. at 7).

In determining the equipment subject to municipal purchase, the Department will consider the purpose of the equipment. In making this determination, the Department will consider whether the purpose of the equipment is to provide distribution service. This determination of streetlighting equipment subject to municipal purchase would also be consistent with the Department's classification of streetlighting equipment in Account 373 of the Federal Energy Regulatory Commission's System of Accounts. If the Account 373 equipment serves no purpose in the distribution system, it should be considered streetlighting equipment. The Department will also consider the principal use of the equipment. If the principal use of the equipment is to provide streetlighting, the equipment is subject to municipal purchase.

In this instance, utility poles, that is poles that support utility service, are part of the distribution system. Brackets on utility poles do not serve a distribution system purpose, and are therefore part of streetlighting equipment.⁽²⁾ For example, where an electric company attaches equipment, such as for metering, on a bracket that is streetlighting equipment, the principal use of the bracket is streetlighting, and the bracket is subject to municipal purchase.

The Department will use the same determination for classification of dedicated poles. Where poles are used exclusively to provide streetlighting service and are not part of the distribution system, they are streetlighting equipment, and are subject to municipal purchase.

Finally, the Act provides that a municipality may acquire all or any part of the streetlighting equipment of the electric company. In determining what "all or any part of the streetlighting equipment" means, the Department will consider individual streetlights to be an integral facility consisting of luminaires, lamps, ballasts, photocells, brackets, conductors from the luminaire to the distribution connection, and dedicated poles where applicable. Purchase of individual components of the integral facility would be an administratively burdensome and inefficient process. Therefore, where a municipality decides to purchase individual streetlights, it must purchase the integral facility. This would include dedicated poles where applicable.

2. Valuation of the Equipment

The Act requires municipalities that purchase an electric company's streetlighting equipment to compensate the electric company for the unamortized investment. G.L. c. 164, § 34A(b). Both the Towns and the Company agree that the unamortized investment is equal to the book value for gross plant in service, net of accumulated depreciation. In addition, both the Towns and the Company agree on the value of the gross plant in service and accumulated depreciation through 1990. The Towns and the Company disagree on the depreciation rate for the period from 1991 through present.

The Company uses a composite distribution plant depreciation rate for all distribution plant assets and streetlighting equipment, and maintains accumulated depreciation in a single account (Company Initial Brief at 10). The Company states that the last time the depreciation reserve was allocated to streetlighting investment was in a 1990 depreciation study filed with the Department as part of its general rate case, D.P.U. 92-92 (id.). For activity after 1990, the Company's composite distribution plant depreciation rate of 2.9 percent was applied to the updated gross plant (id.). The Company contends that, until a future depreciation study is performed, it is reasonable and appropriate to use the composite rate, as this is used for both accounting and ratemaking purposes (id.).

The Towns contend that streetlighting equipment has a shorter useful life than other distribution assets, and that streetlighting equipment depreciation rates must be greater

than the rate used for all distribution plant (Towns Initial Brief at 11). Therefore, the Towns state that the composite distribution plant depreciation rate is not proper for determining the accumulated depreciation reserve for streetlighting equipment (id. at 14-15). The Towns have calculated a streetlighting equipment depreciation rate of 5.9 percent for the period through October 1992, and propose to use a depreciation rate of 5.27 percent thereafter (id.).

The use of a composite distribution plant depreciation rate is appropriate where the Company is not required to assign a value to the individual components of the distribution plant. Here, the Act requires valuation of streetlighting equipment, and for the period from the last depreciation study, a valuation based on the composite distribution plant depreciation rate is not appropriate. The Company must value streetlighting equipment based on a depreciation rate that recognizes the useful life of the streetlighting equipment, not a composite distribution plant depreciation rate.

A future depreciation study would provide a prospective allocation of depreciation expense to streetlighting equipment, and for valuation purposes would not reflect retrospective depreciation. This is because a future depreciation study that begins with the net plant investment using the composite distribution plant depreciation rate for streetlighting equipment, would not account for the higher depreciation rate required of streetlighting equipment over the period since the last depreciation study. Therefore, a future depreciation study would not resolve the issue of the appropriate depreciation rate to be applied to streetlighting equipment during the period from the last depreciation study, and the valuation required by the Act. The Company may either (1) use the streetlighting equipment depreciation rate proposed by the Towns; (2) allocate the streetlighting-specific depreciation rate from the last depreciation study to the gross streetlighting plant in service, net of accumulated depreciation, for the period from the last depreciation study; or (3) perform a depreciation study, and allocate a streetlighting-specific depreciation rate to the gross streetlighting plant in service, net of accumulated depreciation, for the period from the last depreciation study. This would account for the depreciation to be applied to streetlighting equipment during the period from the last depreciation study.

3. The Distribution System Tariff

The Act provides that a municipality may convert to an alternative tariff approved by the Department. The alternative tariff would provide for delivery service by the electric company of electric energy over distribution facilities and wires owned by the electric company to the streetlighting facilities owned by the municipalities. As a preliminary matter, the Towns contend that the alternative tariff, filed by the Company after the commencement of this proceeding, and not reviewed in this proceeding, cannot be the appropriate tariff (Towns Initial Brief at 18).⁽³⁾ The Towns state that of the two available streetlight rates, S-1 and S-2, the S-1 rate under which they currently receive distribution service would overcharge them, once they purchase the streetlighting equipment, because it reflects lighting equipment and maintenance costs (*id.* at 18-19). The Towns contend that the S-2 rate is available to customers that own their own equipment (*id.* at 19). The Towns maintain that with the purchase of the streetlighting equipment, the S-1 rate would no longer be the appropriate tariff, and because the energy charges for both the S-1 and S-2 rates were developed in an identical manner, the S-2 rate is the appropriate alternative tariff (*id.* at 19-20).

The Company states that, because it was designed for publicly-owned lighting systems, the S-2 rate is not the appropriate rate for municipalities that purchase their streetlighting equipment pursuant to the Act (Company Initial Brief at 15). The Company contends that the S-2 rate was developed for a group of lights served from a single connection to the Company's distribution system and that such a system includes streetlighting equipment and conductors, all of which are owned by the municipalities (*id.*). In addition, the Company states that under the S-2 tariff, each connection to the distribution system generates a customer charge (*id.*).

The Department does not have to address the appropriateness of the Company's proposed alternative tariff in this proceeding. Instead, the Department addresses the appropriateness of the existing S-2 tariff as an alternative tariff for municipalities that purchase their streetlighting equipment. The Towns' contention that the S-2 tariff is the appropriate alternative tariff would have the Department overlook the fact that the S-2 rate provides for a customer service charge at each connection. This charge would be applied whether or not a meter is installed at the particular location. Without addressing the merits of such a charge or otherwise addressing the appropriateness of the S-2 rate, the applicability of the customer service charge at each connection would overcharge municipal customers, and makes the S-2 tariff inappropriate for municipalities that purchase their streetlighting equipment pursuant to the Act. The appropriate alternative

tariff will be determined in the Department's review of the Company's proposed alternative tariff.

4. Pole Attachment Fees

Although BECo has not proposed a pole attachment fee, the Company contends that, if an electric company chooses to sell the streetlighting bracket, such a charge would be justified and appropriate (Company Initial Brief at 16). The Towns contend that the Department should not authorize such a fee. The Towns maintain that such a fee is not consistent with the intent of the Legislature, that streetlighting equipment is not within the utility pole usable space, that the utility poles are located upon land owned by the municipalities, and that municipalities, as distribution system customers will pay an allocated share of distribution facilities, including distribution poles (Towns Initial Brief at 23-24).

The Department, in this proceeding, has required the Company to include brackets within the streetlighting equipment subject to purchase by municipalities under the Act. In addition, the Department has found that streetlighting equipment is within the usable space on an electric company's utility pole. See Massachusetts Electric Company, D.T.E. 98-52 (1998). Therefore, a pole attachment fee would be appropriate.

The Company has not proposed a pole attachment fee, nor has the Company demonstrated any incremental cost of attachment created by the municipal purchase of streetlighting equipment. Because the Act has identified a new class of attachers, it would be inappropriate for the Company to establish a fully-allocated, cost-based charge for municipal streetlighting attachments outside of a general rate case. Otherwise, the Company would have a new source of revenue to recover costs that are already being recovered in its general revenue requirement. The Company may propose a fully-allocated, cost-based charge for municipal streetlighting attachments in its next general rate case.

The Department notes that policies enunciated in the resolution of the disputes raised by the parties in this proceeding would apply to the resolution of future disputes brought pursuant to the Act. This has been a time-consuming and resource-intensive exercise for both the parties and the Department. The Department trusts that municipalities and electric companies would adhere to the policies expressed here, and will make a concerted effort to resolve issues without the need for the Department's involvement. Absent resolution, to the extent that future disputes arise, the Department would consider requiring the parties to seek official dispute resolution prior to submission of a petition to the Department.

Sincerely,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

cc: Mary L. Cottrell, Secretary

Service List, D.T.E. 98-77

1. In addition, on August 13, 1998, the Department issued a Notice of Inquiry and Order Seeking Comments on generic issues related to the municipal purchase of electric company streetlighting equipment pursuant to the Act. The Department received comments from the Office of the Attorney General (reserving the right to file reply comments), BECo, Cambridge Electric Light Company and Commonwealth Electric Company, Eastern Edison Company, Massachusetts Electric Company, Western Massachusetts Electric Company, Brotherhood of Utility Workers, Cape Light Compact, the Towns, National Energy Choice (additional comments with the Massachusetts Municipal Association filed on November 25, 1998), the Cities of Haverhill and Quincy, and the Towns of Chelmsford, Northborough and Stoneham.
2. BECo's safety concerns associated with the Towns purchasing equipment located within the power space on the Company's utility poles would be most effectively addressed through the implementation of safe work practices by the municipality and reasonable maintenance work make-ready preparations by the electric company. In

addition, it would also be reasonable for an electric company to require indemnification of the electric company by the municipality for any maintenance performed on the streetlighting equipment.

3. On September 30, 1998, the Company submitted an alternative tariff for municipalities that purchase their streetlighting equipment. See D.T.E. 98-108.